Haji Wan Habib Syed Mahmud & MAnor v The State Government of Sarawak

HIGH COURT (KUCHING) — SUIT NO 22–150 OF 2002–III (II)
DAVID WONG JC
20 FEBRUARY 2007

Labour Law — Pensions — Recomputation of pensions — Whether plaintiffs, are entitled to a corresponding increase of their pensions under reg 20(1) and (3) when salary of members was revised upwards — Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pension and Gratuities) Ordinance 1980 First Schedule reg 20(1), (3)

Limitation — Accrual of cause of action — Recomputation of pensions — When cause of action arises — Whether action time barred — Limitation Ordinance of Sarawak (Cap 49)

The first plaintiff was a member of Dewan Undangan Negeri Sarawak ('DUN') from 11 June 1977 to 12 March 1987, having completed 115 months reckonable service. The second plaintiff was a member of the DUN from 28 August 1974 until 10 August 1979 having completed 59 months reckonable service. By virtue of their services, they were granted pensions pursuant to reg 3 the First Schedule to the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pension and Gratuities) Ordinance 1980 (the 'Principal Ordinance 1980'). The first plaintiff had received his monthly pension of RM1,000 since his ceasing as a member of the DUN on 12 March 1987 and the second plaintiff had received his monthly pension of RM819.44 since 1 July 1980. Since 1 June 1992, the monthly salary of a member of the DUN had been revised upwards to RM3,000 from RM2,000 per month by virtue of s 2 of the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions and Gratuities) (Amendment) Ordinance 1992 (the 'Amendment Ordinance 1992'). The first and second plaintiffs as former members of the DUN wrote to the secretary of the DUN seeking for a recomputation of their respective pensions and the acting secretary of the DUN, acting for the defendant through his letters informed the plaintiffs that they were not eligible for the recomputed pension despite salaries of the members of DUN being increased to RM3,000 per month under reg 20 of the First Schedule to the Principal Ordinance 1980. Because of this refusal to recompute, the plaintiffs took out this suit. The issue to be decided was whether the plaintiffs, being ex-members of the DUN and having been granted the pensions under reg 3 of the First Schedule to the Principal Ordinance 1980, were entitled to a corresponding increase of their pensions under regs 20(1) and (3) of the First Schedule to the Principal Ordinance 1980, when the salary of members was revised upwards.

Held:

(1) Once a member of the DUN is given a pension, he or she has obtained a vested right for life and with it the right to have the pension adjusted whenever there is a revision of the salary of a member of the DUN. There was no dispute that both plaintiffs had been in receipt of their pensions since they ceased to be members of the DUN. The language of regs 20(1) and (3) are clear as the words 'shall be adjusted' are used. The fact that the state parliament had to amend reg 20(1) to take effect in 2003, fortified this conclusion that whenever there is a revision of the salary of DUN members, there was an automatic recomputation of the pensions of ex DUN members (see paras 15–16).

(2) The fact that the plaintiffs' pension granted under reg 3 was based on the highest drawn salary of a member of the DUN during any period of reckonable service, had no bearing with regard to the recomputation of pension under reg 20 because the same words 'highest drawn salary' did not appear in reg 20. The phrase 'highest drawn salary' was only for purpose of calculating the amount of pension payable to a member of the DUN under reg 3 when the person ceased to be a member of the DUN having completed 36 months reckonable service. The right of a member of the DUN to recomputation of pension referred to in reg 20 arises, whenever there is a revision of salaries of members. Regulation 20(1) regulates that whenever the salaries of members are revised, the salary on which a pension granted under reg 3 is based shall be adjusted to the revised salary of member and the pension recomputed accordingly. There is no express or implied linkage between regs 3(2) and 20(1)(3) (see paras 17–19).

(3) The defendant had not produced any evidence to show that the defendant would suffer financially or was not in a position to pay the plaintiffs or other ex DUN members should the court rule in favour of the plaintiffs. The presumption of the law must be that all State Governments in Malaysia are solvent and always in a position to honor its statutory duties (see para 23).

(4) The question of the plaintiffs' sleeping on their rights did not arise as there was the Limitation Ordinance of Sarawak (Cap 49) ('Limitation Ordinance') which would punish any litigants sleeping on their rights. In any event the plaintiffs had written to the defendant on various occasions and it was only when they were informed that there would be no recomputation that they resorted to this action (see para 24).

(5) The statutory duty to recompute starts whenever there is a revision of the salary of members of the DUN and with it the duty to pay the recomputed pension. Thus, the limitation period starts when there was a breach of the statutory duty to pay. It was clear from the pleadings that the plaintiffs' claims were within the six year period and as such those claims were not caught by the Limitation Ordinance (see paras 27–28).

[Bahasa Malaysia summary

Plaintif pertama adalah ahli Dewan Undangan Negeri Sarawak ('DUN') dari 11 Jun 1977 sehingga 12 Mac 1987, setelah melengkapkan 115 bulan perkhidmatan yang

diambil kira. Plaintif kedua adalah ahli DUN dari 28 Ogos 1974 sehingga 10 Ogos 1979 setelah melengkapkan 59 bulan perkhidmatan yang diambil kira. Berdasarkan perkhidmatan mereka, mereka telah diberikan pencen menurut peraturan 3 Jadual Pertama Ordinan Ahli Pentadbiran dan Ahli Dewan Undangan Negeri (Saraan, Pencen dan Ganjaran) 1980 ('Ordinan Utama 1980'). Plaintif pertama telah menerima pencen bulanannya sebanyak RM1,000 semenjak beliau berhenti sebagai ahli DUN pada 12 Mac 1987 dan plaintif kedua telah menerima pencen bulanannya sebanyak RM819.44 semenjak 1 Julai 1980. Semenjak 1 Jun 1992, gaji bulanan ahli DUN telah disemak, meningkat kepada RM3,000 daripada RM2,000 sebulan menurut s 2 Ordinan Ahli Pentadbiran dan Ahli Dewan Undangan Negeri (Saraan, Pencen dan Ganjaran) (Pindaan) 1992 ('Pindaan Ordinan 1992'). Plaintif pertama dan kedua adalah bekas ahli DUN telah menulis kepada setiausaha DUN meminta untuk satu pengiraan semula untuk pencen mereka dan pemangku setiausaha DUN, bertindak bagi pihak defendan melalui suratnya memberitahu plaintif-plaintif bahawa mereka tidak layak untuk pengiraan semula pencen walaupun gaji ahli DUN telah dinaikkan kepada RM3,000 sebulan di bawah peraturan 20 Jadual Pertama Ordinan Utama 1980. Disebabkan penolakan untuk pengiraan semula, plaintif-plaintif mengambil tindakan ini. Isu yang perlu diputuskan adalah sama ada plaintif-plaintif, sebagai bekas ahli DUN dan diberikan pencen di bawah peraturan 3 Jadual Pertama Ordinan Utama 1980, berhak untuk memadankan kenaikan pencen mereka di bawah peraturan 20(1) dan (3) Jadual Pertama Ordinan Utama 1980, apabila gaji ahli telah disemak kenaikannya.

Diputuskan:

(1) Apabila seseorang ahli DUN diberikan pencen, mereka mendapat hak untuk hidup dan dengannya hak untuk mendapatkan pencen yang diselaraskan apabila terdapatnya semakan dalam gaji ahli DUN. Tiada pertikaian bahawa kedua-dua plaintif telah menerima pencen mereka semenjak mereka berhenti menjadi ahli DUN. Bahasa peraturan 10(1) dan (3) adalah jelas seperti mana ayat 'seharusnya disesuaikan' digunakan. Keadaan di mana dewan negeri perlu meminda peraturan 20(1) untuk memberikan kesan dalam 2003, mengukuhkan kesimpulan ini bahawa apabila terdapatnya semakan gaji ahli DUN, terdapatnya pengiraan semula pencen secara automatik untuk bekas ahli DUN (lihat perenggan 15–16).

(2) Keadaan di mana pencen plaintif-plaintif dibenarkan di bawah peraturan 3 adalah berdasarkan pengeluaran gaji tertinggi ahli DUN semasa perkhidmatan yang diambil kira, tidak dibawa bersama dengan berkenaan dengan pengiraan semula pencen di bawah peraturan 20 kerana ayat yang sama 'pengeluaran gaji tertinggi' tidak kelihatan dalam peraturan 20. Frasa 'pengeluaran gaji tertinggi' hanyalah untuk tujuan pengiraan jumlah pencen yang perlu dibayar kepada ahli DUN yang melengkapkan 36 bulan perkhidmatan yang diambil kira. Hak seseorang ahli DUN untuk pengiraan semula pencen merujuk kepada di dalam peraturan 20, apabila terdapatnya semakan gaji ahli-ahli. Peraturan 20(1) menyelaraskan bahawa apabila gaji ahli-ahli disemak, gaji di mana pencen dibenarkan di bawah peraturan 3 seharusnya diselaraskan kepada semakan gaji ahli dan pengiraan semula pencen yang sewajarnya.

Tidak terdapat perhubungan yang jelas atau tersirat di antara peraturan 3(2) dan 20(1)(3) (lihat peranggan 17–19).

(3) Defendan tidak mengemukakan apa-apa bukti untuk menunjukkan bahawa defendan akan menjejaskan kewangan atau tidak dalam keadaan untuk membayar plaintif-plaintif atau bekas ahli DUN yang lain seharusnya mahkamah memerintahkan bagi pihak plaintif. Anggapan dalam undang-undang mestilah, kesemua kerajaan negeri di Malaysia berkemampuan dan selalu dalam keadaan untuk menjaga nama baik tugas statutorinya (lihat perenggan 23).

(4) Persoalan plaintif-plaintif tidak mengendahkan hak mereka tidak timbul kerana terdapatnya Ordinan Had Masa Sarawak (Cap 49) (Ordinan Had Masa) yang akan menghukum mana-mana litigan yang tidak menyedari hak mereka. Apabila plaintif-plaintif menulis kepada defendan berkenaan dengan pelbagai keadaan dan apabila hanya mereka memberitahu bahawa tiada pengiraan semula menyebabkan mereka mengambil tindakan ini (lihat perenggan 24).

(5) Tanggungjawab statutori untuk pengiraan semula bermula apabila terdapatnya semakan gaji ahli DUN dan dengannya tanggungjawab untuk membayar pengiraan semula pencen. Oleh yang demikian, tempoh had masa bermula apabila terdapatnya perlanggaran tanggungjawab statutori untuk membayar. Adalah jelas daripada pliding bahawa tuntutan plaintif adalah dalam tempoh enam tahun dan dengan itu tuntutan tidak terperangkap dengan Ordinan Had Masa (lihat perenggan 27–28).]

Notes

For cases on pensions generally, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1587–1592.

For cases on accrual of cause of action generally, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2079–2087.

Cases referred to

Andrew Nyabe & 3 others v Secretary Dewan Undangan Negeri Sarawak & 1 other (unreported) (refd)

Haji Wan Othman & Ors v Government of the Federation of Malaya [1965] 2 MLJ 31 (refd)

Legislation referred to

Government Proceedings Act 1956 s 33(4)

Limitation Ordinance of Sarawak Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions and Gratuities) (Amendment) Ordinance 1992 s 2, First Schedule regs 20(1), (3).

Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pension and Gratuities) Ordinance 1980 s 8, First Schedule regs 3, 20

Wong Ho Leng (Wong Hong Leng & Co) for the first plaintiff.

Chong Siew Chiang (Chong Brothers Advocates) for the second plaintiff.

Thomas Akin Jelimin (Senior State Legal Officer) (State Attorney General Office Kuching, Sarawak) for the defendant.

David Wong JC:

[1] This matter in my view only concerns the interpretation of reg 20(1) and (3) of the first schedule of the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions and Gratuities) (Amendment) Ordinance, 1992 which came into force on 1 June 1992 ('the (Amendment) Ordinance 1992') as the facts are undisputed, which facts are these.

[2] The first plaintiff was a member of Dewan Undangan Negeri Sarawak ('DUN') from 11 June 1977 to 12 March 1987, having completed 115 months reckonable service. The second plaintiff was a member of Dewan Undangan Negeri Sarawak (DUN) from 28 August 1974 until 10 August 1979 having completed 59 months reckonable service. By virtue of their services, they were granted pensions pursuant to reg 3 the First Schedule to the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pension and Gratuities) Ordinance 1980, which came into force on 1 July 1980 ('the Principal Ordinance 1980').

[3] The first plaintiff has received his monthly pension of RM1,000 since his ceasing as a member of DUN on 12 March 1987 and the second plaintiff has received his monthly pension of RM819.44 since 1 July 1980.

[4] Since 1 June 1992, the monthly salary of a member of DUN had been revised upwards to RM3,000 from RM2,000 per month by virtue of s 2 of the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions and Gratuities) (Amendment) Ordinance, 1992 which came into force on 1 June 1992 ('the (Amendment) Ordinance 1992').

[5] The first and second plaintiffs as former members of DUN wrote to the Secretary of DUN seeking for a recomputation of their respective pensions vide letters dated 12 August 2002 and 12 July 2002 respectively, and the Acting Secretary of DUN, acting for the defendant through his letters dated 2 August 2002 and 11 September 2002 respectively, informed the plaintiffs that they were not eligible for the recomputed pension despite salaries of the Members of DUN being increased to RM3000 per month under reg 20 of the First Schedule to the Principal Ordinance, 1980.

[6] The second plaintiff's highest drawn salary when he ceased to be a Member of DUN on 10 August 1979 was RM1000 per month, but the salary on which his pension was calculated, is based on RM2000.

[7] Because of this refusal to recompute, the plaintiffs took out this suit and made the following claims:

Jointly claimed by both plaintiffs:

(1) A declaration that the plaintiffs, having been ex-members of the Dewan Undangan Negeri Sarawak (the DUN) and, having been in receipt of their monthly pensions respectively pursuant to reg 3 of the First Schedule to the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions and Gratuities) Ordinance, 1980 after their ceasing as Members of 'the DUN', were and are entitled to have their respective Pensions recomputed based on the revised salary of RM3,000 per month in the manner prescribed by the provisions of the said regulation, and were and are entitled to be paid such recomputed pensions with effect from 1 June 1992 (the effective date of the coming into force of the revised salaries under s 2 of the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions and Gratuities) (Amendment) Ordinance, 1992) ('the Amendment Ordinance 1992').

For the first plaintiff, the claims are as follows:

(a) A declaration that the first plaintiff, having been a member of the Dewan Undangan Negeri Sarawak (the DUN), on 11 June 1977, and having been in receipt of his pension of RM1,000 per month since his ceasing as a member of the DUN on or about 12 March 1987, was and is entitled to have his pension recomputed based on the revised salary of RM3,000 per month which amounts to RM1,500 per month, and was and is entitled to be paid by the defendant such recomputed pension of RM1,500 as from 1 June 1992;

(b) An order directing the defendant to pay the first plaintiff the recomputed pension of RM1,500 per month as from 1 June, 1992 or from such other date to the date up to such date as this Honourable Court may think fit and just, less the amount of pension of RM1,000 per month which has been paid by the defendant to the first plaintiff;

(c) Interests;

(d) Costs.

For the second plaintiff the claims are as follows:

(a) A declaration that the second plaintiff, having been a Member of the Dewan Undangan Negeri Sarawak (the DUN), on 28 August 1974, and having been in receipt of his pension of RM819.44 per month since his 1 July 1980 after his ceasing as a member of 'the DUN' on 10 August 1979 was and is entitled to have his pension recomputed based on the revised salary of RM3,000 per month which amounts to RM1,208.33 per month, and was and is entitled to be paid by the defendant such recomputed pension of RM1,208.22 as from 1 June 1992;

(b) A declaration that the second plaintiff is entitled to receive the medical facilities on such terms and conditions like only other ex-members has enjoyed as specified by the Yang di-Pertua Negeri Sarawak;

(c) An order directing the defendant do pay the second plaintiff the recomputed pension of RM1,208.33 per month or such other sum as from 1 June 1992 or from such other date up to the date as this Honourable Court may think fit

and just less the amount of pension of RM819.44 per month which has paid by the defendant to the second plaintiff;

(d) Interests; and

(e) Costs.

ISSUES

First Issue

[8] Whether the plaintiffs, being ex-members of DUN and having been granted the pensions under reg 3 of the First Schedule to the Principal Ordinance 1980, are entitled to a corresponding increase of their pensions under regs 20(1) and (3) of the First Schedule to the Principal Ordinance, 1980, when the salary of Members was revised upwards to RM3000 from RM2,000 per month?

The Law

[9] Regulations 20(1)(2) & (3) of the First Schedule to the Principal Ordinance, 1980 read as follows:

> 20(1). Whenever the salaries of Members are revised, the salary on which a pension (granted under reg 3) or a derivative pension (granted under regs 6, 7 or 8 is based shall be adjusted to the revised salary as appropriate and the pension recomputed accordingly.
>
> (2). The recomputed pension under paragraph (1) shall be payable with effect from the coming into force of the revised salaries.
>
> (3). In the case of a person who, before the coming into force of the Ordinance, ceased to be a member and he or his dependant is in receipt of a pension or derivative pension, as the case may be, the grant of the pension or derivative pension shall be governed by the provisions of these Regulations and the salary on which a pension granted under reg 3 or a derivative pension granted under regs 6, 7 or 8 is based shall be adjusted to the salary of a Member as appropriate and the pension or derivative pension shall be recomputed accordingly and be payable with effect from the date of the coming into force of the Ordinance and thereafter such pension or derivative pension shall be recomputed and payable in accordance with paragraphs (1) and (2) whenever there is a revision of salaries.

[10] The first matter which I wish to deal with is the position of the second plaintiff in the context of reg 20(3). Reading the just mentioned regulation, there is no doubt in my mind that the second plaintiff's position is as described therein, that is he is a person who ceased to be a member before the coming into force of the (Amendment) Ordinance 1992 and also in receipt of a pension.

[11] Secondly, it is to be noted that the defendant had during the hearing conceded to prayer (a) of the second plaintiff's statement of claim.

Thomas Akin Jelimin's (Senior State Legal Officer) contentions:

1. Revised salary must be backdated

[12] Mr Jelimin submitted that the plaintiff' pension can only be revised if the revised salary had been backdated to the period within their reckonable period of service ie when they were members of the DUN. I am not quite sure of the reasons Mr Jelimin based his contention on. Regulations 20(1) and (3) are quite clear and it is that 'whenever' there is a revision of salary of members of the DUN, the salary on which a pension is calculated shall be readjusted to the revised salary as appropriate. There is no proviso to say what Mr Jelimin has contended. Accordingly I reject the contention.

2. Pension is a privilege and not a right; hence any recomputaion is also a privilege

[13] Mr Jelimin on this contention relies on the case of *Haji Wan Othman & Ors v Government of the Federation of Malaya* [1965] 2 MLJ 31 where Suffian J (as he then was) held that:

> The whole tenor of the pensions legislation is permissive and no officer has therefore an absolute right to pension.

[14] He further refers to s 8 of the Members of the Administration and Members of Dewan Undangan Negeri (Remuneration, Pensions and Gratuities) Ordinance, 1980, which provides:

> A member may be granted such pension, gratuity or other benefits as are prescribed in the Regulations contained in the First Schedule.

[15] I have no problem with the submission except that once a member is given a pension, he or she has obtained a vested right for life and with it the right to have the pension adjusted whenever there is a revision of the salary of a member of the DUN. There is no dispute in this case that both plaintiffs had been in receipt of their pensions since they ceased to be members of the DUN. The language of regs 20(1) and (3) are clear as the words 'shall be adjusted' are used.

[16] Mr Jelimin however further submitted that the applicable law in this case should be the law as it exists now. That law is the new amendment to reg 20(1) (effective from 1 January 2003) (2003 amendment) which requires a direction from the Yang di-Pertua Negeri before the pension of an ex DUN member could be recomputed. Again I am not sure on what basis did he ground this submission on. The law is clear and it is this. Unless there are clear words in the legislation, the same must be interpreted prospectively and not retrospectively. With respect, the cases cited by Mr Jelimin in encl 100 are not relevant and hence do not bind me. In any event the plaintiffs' claims were filed sometime in 2002 when the 2003 amendment had not been in force. Even if the plaintiffs' claims were filed after 2003, it would not have mattered as they were relying on legislations which were applicable to them. Accordingly I reject this contention. It is also my view that the fact that the State parliament had to amend reg 20(1) to take effect in 2003 fortifies my conclusion that whenever there is a revision of the salary of DUN members, there is an automatic

recomputation of the pensions of ex DUN members. With the 2003 amendment, such automatic recomputation is taken away and any recomputation is now left with the discretion of the Yang di-Pertua Negeri.

3. Highest drawn salary

[17] The submission as I understand it is that pension of all DUN members must be based on their highest drawn salary. Mr Jelimin relied on reg 3(2) which states as follows:

> The monthly pension payable under paragraph (1) shall be based on the highest drawn salary of the Member during any period of reckonable service and …

[18] In the joint submission of Mr Wong Ho Leng and Mr Chong Siew Chiang, learned counsels for the plaintiffs at pp 7–8 encl 91)said:

> The fact that the plaintiffs' pension granted under reg 3 is based on the highest drawn salary of the Member during any period of reckonable service has no bearing with regard to the recomputation of pension under reg 20 because the same words (highest drawn salary) do not appear in reg 20. The phrase (highest drawn salary) is only for purpose of calculating the amount of pension payable to the Member under reg 3 when the person ceased to be a Member having completed 36 months reckonable service. The right of a Member to recomputation of pension referred to in reg 20 arises, whenever there is a revision of salaries of Members. Regulation 20(1) regulates that whenever the salaries of Members are revised, the salary on which a pension granted under reg 3 is based, shall be adjusted to the revised salary of Member and the pension recomputed accordingly.

[19] I prefer the submissions of learned counsels for the plaintiffs for the simple reason that there is no express or implied linkage between regs 3(2) and 20(1)(3).

4. Mandamus and Declaration

[20] Mr Jelimin submitted that the plaintiffs should have pursued their claims by way of an order of mandamus as they were seeking to enforce a statutory duty of the defendant. Further he submitted that the plaintiffs' application for a declaration was also wrong as they did not have an absolute right for recomputation at the time of trial as any recomputation requires a direction from the Yang di-Pertua Negeri.

[21] In respect of the submission on not applying for an order of mandamus, I do not agree. The plaintiffs must first establish their rights before any enforcement of the statutory duty can be taken. In the instant case, the defendant had disputed the plaintiffs' rights to recomputation of their pension and it is only proper that they have their rights determined first before any action can be taken.

[22] As for whether or not this court should grant the declaration, I am fully aware that it is a discretionary power. Firstly, let me say that for reasons stated earlier in my judgment, I disagree with Mr Jelimin's submission that the 2003 amendment should

be taken into account in deciding whether or not to grant the declaration. One of grounds which Mr Jelimin urged this court to take into consideration is at p 26 of encl 88 which states as follow:

> If the court were to order payment of all the recomputed pensions which the plaintiffs alleged were accrued to them, a substantial amount (covering recomputed pension from 1992 to 2006) would have to be paid out to the plaintiffs and other ex-Dewan Members who are in a position similar to that of the plaintiffs), would have to be paid out of the Consolidated Fund of the State in one lump sum. Such payment would have some adverse impact on the State's financial position which would not have been felt if the payments were made on a monthly or regular basis or when the accrued amount is much less, to the plaintiffs and other ex-Dewan Members like the plaintiffs. In these circumstances, as the plaintiffs have slept on their alleged 'rights' for so long without pursuing legal remedies to enforce what they alleged to be their rights to recomputation and adjustment of their pensions, this honourable court should decline to exercise its discretion in favour of the plaintiffs and ought therefore, to dismiss this action as the defendant had prayed for in para 16 of the defence.

[23] Learned counsel here had not produced any evidence to show that the defendant would suffer financially or is not in a position to pay the plaintiffs or other ex-DUN members should I rule in favour of the plaintiffs. The presumption of the law must be that all State Governments in Malaysia are solvent and always in a position to honor its statutory duties. That presumption is the reason why we have laws prohibiting enforcement of judgment for payments against the government (see s 33(4) of the Government Proceedings Act 1956). That being the case, I will not take that into consideration in my deliberation.

[24] The question of the plaintiffs' sleeping on their rights does not arise as there is the Limitation Ordinance of Sarawak (Cap 49) which would punish any litigants sleeping on their rights. In any event the plaintiffs had written to the defendant on various occasions and it was only when they were informed that there would be no recomputation that they resorted to this action. This brings me to the next issue.

Second Issue

[25] Whether the plaintiffs' claims or any part thereof are barred by the provision of the Limitation Ordinance of Sarawak (Cap 49) (Limitation Ordinance)?

[26] It is the plaintiffs' contention that the Limitation Ordinance does not apply and their reasons are these. As the 2003 amendment only came into effect on 1 January 2003, the period of limitation only applies after that date. Further it is submitted that the present action is a case of non-feasance and the duty to recompute the pension is a mandatory one and a continuing duty. The failure to compute is thus a continuing breach and a fresh period of limitation starts to run after every breach. Also it is submitted until the defendant makes a final stand on the recomputation, time does not start to run.

[27] With respect, I disagree with the reasons put forth by the plaintiffs' counsels. The statutory duty to recompute starts whenever there is a revision of the salary of

members of DUN and with it the duty to pay the recomputed pension. Thus the limitation period starts when there is a breach of the statutory duty to pay. After perusing the Limitation Ordinance, the applicable item in my view is item 97 which states as follows:

97. Suit for which no period of limitation is provided elsewhere in this schedule

… 6 years …

When the right to sue accrues.

[28] It is clear from the pleadings that part the plaintiffs' claims are within the six year period and as such those claims are not caught by the Limitation Ordinance.

[29] Before I make the final orders, I wish to state that prayers (b) of the first plaintiff and (c) of the second plaintiff which require me to pronounce an 'order directing the defendant to pay …' amounted to a mandamus. At this juncture, this court does not have the power to give such orders. The plaintiffs must first obtain a certificate under s 33 of the Government Proceedings Act 1956 and then present it to the defendant for payment, upon which the defendant under s 33(3) of the Government Proceedings Act 1956 'shall pay the amount stated in the certificate'.

[30] That being the case and for reasons stated above, I grant the following reliefs:

For the first plaintiff:

(1) A declaration that the first plaintiff, having been a member of the Dewan Undangan Negeri Sarawak, (the DUN) on 11 June 1977, and having been in receipt of his pension of RM1,000 per month since his ceasing as a member of the DUN on or about 12 March 1987, was and is entitled to have his pension recomputed based on the revised salary of RM3,000 per month which amounts to RM1,500 per month, and was and is entitled to be paid by the defendant such recomputed pension of RM1,500 as from 22 November, 1996;

(2) That the defendant pay to the first plaintiff the recomputed pension of RM1,500 per month as from 22 November 1996 less the amount of pension of RM1,000 per month which has been paid by the defendant to the first plaintiff (judgment sum);

(3) Interests of 4% per annum on the judgment sum from the 21 November 2002 (date of writ) to the date of judgment;

(4) Statutory interests of 8% per annum on the judgment sum from the date of judgment until the full and final settlement of the judgment sum;

(5) Costs to be taxed unless agreed to the first plaintiff.

For the second plaintiff:

(1) A declaration that the second plaintiff, having been a Member of the Dewan Undangan Negeri Sarawak, (the DUN) on 28 August, 1974, and having been

in receipt of his pension of RM819.44 per month since his 1 July 1980 after his ceasing as a member of 'the DUN' on 10 August 1979 was and is entitled to have his pension recomputed based on the revised salary of RM3,000 per month which amounts to RM1,208 per month, and was and is entitled to be paid by the defendant such recomputed pension of RM1,208.33 as from 22 November 1996;

(2) A declaration that the second plaintiff is entitled to receive the medical facilities on such terms and conditions like other ex-members has enjoyed as specified by the Yang di-Pertua Negeri Sarawak;

(3) That the defendant pay to the second plaintiff the recomputed pension of RM1,208.33 per month as from 22 November 1996 less the amount of pension of RM819.44 per month which has paid by the defendant to the second plaintiff (judgment sum);

(4) Interests of 4% per annum on the judgment sum from the 21 November 2002 (date of writ) to the date of judgment;

(5) Statutory interests of 8% per annum on the judgment sum from the date of judgment until the full and final settlement of the judgment sum;

(6) Costs to be taxed unless agreed to the second plaintiff.

[31] Finally I wish to state that in the midst of concluding my judgment, I was referred by Mr Chong Siew Chiang to the unreported case of *Andrew Nyabe & 3 others v Secretary Dewan Undangan Negeri Sarawak & 1* (unreported) other where Clement Skinner J had considered similar issues. I have had the chance of reading the learned judgment of His Lordship and take great comfort of the fact that his interpretation of the relevant legislations is similar to mine.

Order accordingly.

Reported by Peter Ling